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September 15, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

RE: CC Docket No. 94-129

Dear Mr. Caton:

Enclosed please find an original and 11 copies of "WorldCom's Comments" plus a diskette copy of the above-referenced docket.

Sincerely,

Richard S. Whitt
Director, Federal Affairs

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber	)	
Carrier Selection Changes Provisions of	)	
the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

COMMENTS OF WORLDCOM, INC.

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September 15, 1997

SUMMARY

WorldCom supports the Commission's prompt adoption of stringent anti-slamming rules applicable to all carriers and designed to fully protect the interests of slammed consumers and carriers, without creating increased incentives for consumer fraud or anticompetitive carrier conduct. For the most part, the FCC's proposed rule changes appear to establish a reasonable approach that, if adopted with the revisions suggested by WorldCom, will go a long ways toward meeting this laudable goal.

First, the Commission should incorporate the specific language of Section 258(a) into its Part 64 rules to reflect the statutory prohibition of slamming by any telecommunications carrier, not just IXCs as is the case under current rules. Any carrier, including an incumbent LEC, that submits or executes a change in a subscriber's selection of a preferred carrier, is subject to Section 258(a) of the Act.

WorldCom believes the Commission should create and maintain a "bright-line" test that establishes, clearly and unambiguously, which carriers are subject to the Commission's anti-slamming rules. While the "submitting carrier" is the carrier that requests that a consumer's carrier be changed, it also entails using marketing and solicitation practices in order to seek to provide retail services to the end user consumer, as well as being responsible for establishing and applying all rates, terms, and conditions of providing such retail services to the consumer. In contrast, the "executing carrier" is the carrier that undertakes the software changes necessary to actually make the subscriber a new customer of the submitting carrier. Under this bright-line distinction between submitting and executing carriers, the Commission should reaffirm that, where a switchless reseller meets the definition of a submitting carrier, the underlying facilities-based carrier which serves that reseller is not the submitting carrier.

The Commission should subject the incumbent LECs to different requirements and prohibitions because of the many advantages that their incumbency gives them compared to competing carriers. The ILEC will be in the unique position to act as both the submitting carrier and the executing carrier for changing the local and long distance services of its captive base of consumers. Moreover, the ILEC also will be, in many cases, both the executing carrier and the consumer's current preferred carrier, which will create a direct conflict of interest whenever a consumer seeks to change to a competing carrier. Without strict rules, the ILEC will be able to use this conflicted position to create unreasonable terms or delays, or outright refusals, of valid carrier-change requests, thereby thwarting the development of competition. At minimum, the Commission should require verification of ILEC marketing orders by an independent, third party entity.

WorldCom agrees with the Commission that the "welcome package," when used to confirm telemarketing orders without requiring affirmative written responses by the consumer, can become a vehicle for unlawful marketing practices. WorldCom believes that independent third party verification is the preferred method for garnering consumer consent to change service providers, along with the use of signed contracts and letters of authorization. At the same time, however, the Commission should not prohibit the use of welcome packages where carriers desire to secure a written LOA from the consumer.

While WorldCom agrees with the Commission that in-bound calls by consumers raise slamming concerns, WorldCom proposes that any rule requiring verification of PC solicitation via in-bound calls generally should be limited to the carrier's new residential customers. Where carriers already have established, voluntary customer relationships, there is

no compelling need for in-bound verification. This exception should not apply to the ILECs, given their role in many cases as both the submitting and executing carrier.

WorldCom shares the Commission's concerns about the potential for discriminatory conduct by the ILECs in instituting and altering PIC freezes, and believes that independent verification procedures should be extended to PC-freeze solicitations as well. The current PIC freeze process leaves the executing carrier (the ILEC) with far too much discretion to create one set of minimal requirements for lifting the PIC freeze to change the consumer to the executing carrier's affiliated provider, and another, more stringent set of requirements that would apply to the executing carrier's competitors.

The Commission must establish clear definitions, and clear lines between different types of carriers, before apportioning liability among different carriers. WorldCom believes that three fundamental principles should apply where a telecommunications carrier has violated the Commission's verification procedures and collects charges from a consumer for unauthorized services:

- First, as a matter of equity, the consumer must be made whole for any charges paid or expenses incurred that would not otherwise have been paid or incurred ("make whole");
- Second, as a requirement of Section 258, the slammed carrier must be made whole by receiving from the slamming carrier all charges it has collected from the consumer to the slammed carrier from the time the slam occurred ("make whole").
- Third, as a matter of equity, the slamming carrier should be left with no more and no less money from the slammed consumer than the carrier had prior to the slam ("make nothing").

Application of these three principles has several ramifications for Commission policy. In particular, the Commission should reject the view that a consumer who has been

slammed by a carrier should be absolved of all liability for the toll charges assessed by that carrier. This would only create enormous potential for consumer fraud. If the Commission nevertheless should decide to absolve consumers of unauthorized carrier charges, that policy should apply for no more than ten days after the consumer receives the first bill from the slamming carrier.

The Commission also should not authorize the slammed carrier to recover from the slamming carrier more than the full amount collected by the slammed carrier from the consumer. It would be contrary to the plain language of Section 258 for the slammed carrier to be more than simply "made whole." Likewise, the consumer should not receive from the slamming carrier the payment of premiums that the consumer would have earned if not for the slamming; the slammed carrier, which is already being made whole otherwise, would have paid the premiums anyway.

WorldCom suggests that the Commission establish liability based on whether an intentional slam has occurred. Where the verification procedures have been followed, and the authorization is correct, obviously no slam has occurred and the carrier bears no liability. Where the carrier correctly follows the verification procedures, but authorization somehow is incorrect, the Commission should not apportion a punitive level of liability to the carrier. On the other hand, where the carrier has failed to follow the Commission's verification procedures, and the resulting authorization is incorrect, the Commission should deem this to be an intentional slam, and the slamming carrier in this instance should bear full liability by making both the consumer and the slammed carrier whole.

WorldCom strongly supports the prompt examination of alternative mechanisms

for executing PC changes that will reduce PC-change disputes and eliminate current incentives for ILECs to discriminate unreasonably in their role in the PC-change process. In particular, the Commission should undertake a separate rulemaking proceeding to consider the use of an independent third party to execute PC changes on a competitively-neutral basis.

WorldCom does not believe that the issue of when a resale carrier should disclose its underlying carrier is a slamming issue, but instead is governed by Section 201(b) of the Communications Act as potentially an unjust and unreasonable action. Nonetheless, WorldCom agrees with the Commission that a bright-line test would be helpful for resale carriers to understand when a change in an underlying carrier is unlawful under Section 201(b).

Finally, the Commission should take this opportunity to clarify that facilities-based local and long distance carriers have no legal or regulatory liability for the actions of the carriers that resell their services. Switchless resellers buy bulk facilities and services from facilities-based carriers such as WorldCom, and then use these wholesale facilities and services as inputs to retail packages which they assemble and provide to their customers. In this type of business relationship, WorldCom serves only as the underlying carrier, and has no direct involvement in the reseller's operations or marketing practices. Because resellers must use the CIC of their underlying provider, however, facilities-based carriers often are targeted incorrectly for the actions of their reseller customers. The mere use of a carrier's CIC by a switchless reseller does not imply any involvement by that carrier in the reseller's alleged unauthorized change of a consumer's carrier, nor should it be construed as that carrier's approval of the reseller's actions. The same principle should hold true in both the local and long distance markets.

WorldCom also urges the Commission to consider policy requirements that would

allow underlying facilities-based carriers to separate themselves from the independent actions of the carriers that resell their services. One example is the possible use of a "pseudo-CIC" which would show the reseller's name in the ILEC records and bills, rather than the facilities-based carrier's name. In order for the Commission to be able to assign carrier liability more quickly and accurately in formal and informal complaint proceedings, the Commission should take this opportunity to declare that ILECs must employ a "pseudo-CIC" system as soon as practicable, and in any event no later than July 1, 1998.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files its comments in response to the "Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration," FCC 97-248 ("Further Notice"), released on July 15, 1997 in the above-referenced proceeding.

I. INTRODUCTION

WorldCom is a global telecommunications company that provides facilities-based and fully integrated local, long distance, international, and Internet services. WorldCom is the fourth largest facilities-based interexchange carrier ("IXC") in the United States. Following its merger with MFS Communications Company, Inc. on December 31, 1996, WorldCom is now also the largest facilities-based competitive local exchange carrier ("CLEC") in the United States. As a company situated at the center of the rapidly-developing convergence of these and other communications markets, WorldCom has a truly unique perspective on telecommunications policy issues.

Section 258 of the Communications Act of 1934, as amended by the

Telecommunications Act of 1996, establishes a new set of statutory requirements concerning illegal changes in subscriber carrier selection. Section 258(a) states that:

> [n]o telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.[1]

Section 258(b) declares that:

> [a]ny telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe.[2]

WorldCom supports the Commission's prompt adoption of anti-slamming rules applicable to all carriers and designed to fully protect the interests of slammed consumers and carriers, without creating increased incentives for consumer fraud or anticompetitive carrier conduct. WorldCom has filed comments with the Commission in the past calling for stringent and effective rules to curb slamming practices.[3] Unfortunately, despite the Commission's best intentions and efforts, call slamming remains a major scourge of consumers across the United States, and quite frankly represents a singular embarrassment to legitimate service providers in the telecommunications world. Tough federal rules are needed to deter, punish, and --

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[1] 47 U.S.C. Section 258(a) (1996).

[2] 47 U.S.C. Section 258(b).

[3] See, e.g., Comments of LDDS Communications, CC Docket No. 94-129, filed January 9, 1995; Reply Comments of LDDS Communications, CC Docket No. 94-129, filed February 8, 1995; Letter from Richard S. Whitt and Sharon Adams, LDDS WorldCom, to John Muletta, Chief, Enforcement Division, FCC, dated April 5, 1996 ("Whitt/Muletta Letter").

ultimately, perhaps -- eliminate slamming. For the most part, the FCC's proposed rule changes appear to establish a stringent yet equitable approach that, if adopted in the revised manner suggested below, will go a long ways toward meeting this laudable goal.

II. THE SECTION 258(a) PROHIBITION SHOULD EXTEND BROADLY TO ALL TELECOMMUNICATIONS CARRIERS AND SERVICES

A. The Verification Rules Should Apply To All Telecommunications Carriers

The Notice first asks whether the Commission should incorporate the specific language of Section 258(a) into its Part 64 rules "to reflect the statutory prohibition of slamming by any telecommunications carrier, not just IXCs as is the case under our current rules."[4] WorldCom strongly agrees that the Commission's new anti-slamming rules should apply across the board to all telecommunications carriers. This conclusion is consistent with the broad language of Section 258, which applies to "[a]ny telecommunications carrier."[5] Moreover, the Telecommunications Act of 1996 has created an entirely new world in which consumers (hopefully) will be able to benefit from competing choices for providers of local services. As competition slowly works its way into the local exchange market, the incidence of slamming experienced by consumers will begin to rise. Thus, any carrier, including an incumbent LEC, that submits or executes a change in a subscriber's selection of a preferred carrier ("PC"), is subject to Section 258(a) of the Act.

The Notice next seeks comment on how to define "submitting" and "executing"

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[4] Notice at para. 12.

[5] 47 U.S.C. Section 258(b).

carriers. The Commission proposes to define a submitting carrier as "any carrier that requests that a consumer's telecommunications carrier be changed," and an executing carrier as "any carrier that effects such a request."[6] The Commission indicates that the statute "does not require that an executing telecommunications carrier duplicate the PC-change verification efforts of the submitting telecommunications carrier."[7]

WorldCom believes the Commission should create and maintain a "bright-line" test that establishes, clearly and unambiguously, which carriers are subject to the requirements of Section 258, and consequently the Commission's anti-slamming rules. WorldCom agrees with the Commission's basic definition of a submitting carrier as the carrier that requests that a consumer's carrier be changed. However, this definition needs further expansion. It is also apparent that the submitting carrier, through its marketing and solicitation practices, seeks to provide retail services to the end user consumer, and is responsible for establishing and applying all rates, terms, and conditions of providing such retail services to the consumer. This more refined definition emphasizes the elements discussed by the Commission in many of its previous slamming decisions, including that the submitting carrier (1) seeks to become the consumer's presubscribed carrier ("PC"), (2) is the only entity whose name can lawfully appear on an LOA, (3) has the proximate relationship to the end user, and (4) actually sets the retail rates to be paid by the consumer.[8] In contrast, the executing carrier is the carrier that undertakes the software

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[6] Notice at para. 13.

[7] Notice at para. 14.

[8] See, e.g., Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560, 9575-77 (1995) ("LOA Order"); WATS International Corp. v. Group Long Distance (USA), Inc. et al, Memorandum Opinion and Order, 11 FCC Rcd 3720 (Com. Car. Bur. 1995) at paras.

changes necessary to actually make the subscriber a new customer of the submitting carrier. In the current regulatory environment, the only entity capable of, and responsible for, serving as the executing carrier for PIC changes is the ILEC.

Under this bright-line distinction between submitting and executing carriers, the Commission should reaffirm that, where a switchless reseller is the submitting carrier, the underlying facilities-based carrier which serves that reseller is neither the submitting carrier nor the executing carrier. In Section IV.B below, WorldCom will discuss this issue in more depth in the context of apportioning slamming liability among carriers. For purposes of this section, however, the Commission should find that underlying carriers have no affirmative obligations under the Communications Act, as amended, or FCC rules, to perform any functions as a submitting or executing carrier, but act merely as an intermediary conduit between the submitting reseller and the executing ILEC.

The Notice asks "whether incumbent LECs should be subject to different requirements and prohibitions because of any advantages that their incumbency gives them compared to carriers that are seeking to enter the local exchange market."[9] The answer is a resounding yes. WorldCom is very concerned that repeated unreasonable delays or outright refusals by ILECs to process PC-change requests will thwart the development of competition. This is because the ILEC will be, in many cases, both the executing carrier and the consumer's current preferred carrier, which will create a direct conflict of interest whenever a consumer

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14-19 ("WIC Bureau Decision"); app. for review denied, Memorandum Opinion and Order, 12 FCC Rcd 1743 (rel. February 4, 1997), at para. 20 ("WIC Commission Decision").

[9] Notice at para. 15.

seeks to change to a competing carrier. Moreover, only the ILEC will be in the unique position to act as both the submitting carrier and the executing carrier for changing the local and long distance services of its captive base of consumers. The inherent biases of such a conflicted arrangement are painfully obvious. Thus, WorldCom recommends that the Commission adopt even tougher requirements where any telecommunications service provider and/or its affiliate acts as both the submitting and executing carrier. At minimum, this should include requiring verification of marketing orders by an independent, third party entity. The Commission should also adopt a separate rule that specifically prohibits ILECs and their affiliates from sending marketing letters, brochures, or any other type of solicitation to customers who have requested to be changed to a new LEC.

B. The Commission Should Eliminate The "Welcome Package" Verification Option

Current FCC rules allow IXCs to institute one of four confirmation procedures before submitting to ILECs their PIC-change orders generated by telemarketing.[10] Observing that some parties view the fourth verification option, the so-called "welcome package," as a form of "negative option" LOA, the Notice acknowledges these concerns and tentatively proposes the elimination of the "welcome package" as a verification option.[11]

WorldCom agrees, to a point, that the "welcome package," when used to "confirm" telemarketing orders without requiring any affirmative written response by the

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[10] 47 C.F.R. Section 64.1100 (1996).

[11] Notice at para. 16-18.

consumer, can become a vehicle for unlawful marketing practices by a carrier. WorldCom believes that independent third party verification method is the preferred means of garnering consumer consent to change service providers, along with the use of signed contracts and letters of authorization ("LOAs").

At the same time, however, the Commission should not prohibit the use of welcome packages for all verification purposes. Where carriers desire to secure a written LOA from the consumer, welcome packages offer an important means of imparting information and soliciting responses. Thus, the Commission should allow a carrier to use the welcome package as a means of verification by receiving back the customer's signature on an LOA.

C. Verification Rules Generally Should Apply To In-Bound Calls Only From New Residential Customers

The Notice next considers whether the Commission's verification procedures should extend to consumer-initiated "in-bound" telephone calls to carrier sales or marketing centers. The Commission tentatively concludes that verification of in-bound calls is necessary to deter slamming.[12]

WorldCom previously has not favored a requirement that verification be required for in-bound calls from consumers. Many long distance carriers currently are not set up with a ready capability to undertake real-time verification of in-bound calls. Moreover, consumer-initiated calls would not appear to be subject to the abuses which occur when outbound telemarketing is conducted by agents or third party contractors. However, given the pervasive

[12] Notice at para. 19.

and pernicious nature of slamming, WorldCom now agrees that in-bound calls by consumers raise slamming concerns because they offer unscrupulous carriers the same potential opportunity to switch consumers to new or additional telecommunications services they offer. In particular, without requiring some form of verification, in-bound calls may not carry any formal records of the transaction that resulted in a carrier change. Moreover, carrier contests and sweepstakes advertisements could be used to induce consumers to call and subsequently be switched to that carrier. In short, in-bound calling may pose a potential problem that requires regulatory intervention.[13]

WorldCom proposes, however, that any rule requiring verification of PC solicitation via in-bound calls from consumers generally should be limited to the carrier's new residential customers. Where carriers already have established, voluntary customer relationships, there is no compelling need for in-bound verification. In-bound verification is not necessary for business customers as well. This approach would be consistent with current law in California, where the in-bound verification requirement applies only to residential customers.[14]

At the same time, these two exceptions to the general rule -- not requiring verification for in-bound calls from new customers and residential customers -- should not apply to the ILECs. This conclusion is based on the ILECs' unique role in many instances as both the submitting and executing carrier, and (as the Notice points out) the "advantages that their

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[13] For purposes of the Commission's rules, WorldCom believes that solicitations generated by in-bound Internet messages should be viewed as in-bound for purposes of the Commission's rules.

[14] CA PUB UTIL section 2889.5 (West 1997).

incumbency gives them compared to carriers that are seeking to enter the local exchange market."[15] In particular, the ILECs' existing residential customers cannot be deemed to have voluntarily selected the ILEC as their local exchange carrier because there have been absolutely no competitive options available to date. Thus, the Commission should adopt tougher in-bound verification requirements to govern the ILECs wherever they act as both the submitting and executing carrier.

D. Verification Procedures Should Extend To PIC Freezes

Noting that PIC freezes instituted by the ILECs may "have the effect of limiting competition among carriers," the Commission asks whether its PIC-change verification procedures should be extended to PC-freeze solicitations as well.[16]

WorldCom has significant concerns about potential abuses of the PIC freeze process. While PIC freezes theoretically offer consumers some protection against slamming by preventing carriers from making carrier changes on their behalf, they also can be utilized as a weapon to curtail competition. In a recent Commission proceeding, WorldCom highlighted how the current PIC freeze process leaves the executing carrier (the ILEC) with far too much discretion.[17] For example, the executing carrier -- whether as formal policy or informal practice -- could create one set of minimal requirements for lifting the PIC freeze to change the consumer to the executing carrier's affiliated provider, and another, more stringent set of

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[15] Notice at para. 15.

[16] Notice at para. 22.

[17] See Comments of WorldCom, Inc., File No. CCB/CPD 97-19, RM-9085, filed June 4, 1997, at 5.

requirements that would apply to the executing carrier's competitors. The submitting carrier also may face additional burdens of time and expense in getting approval from the executing carrier to change the consumer's preferred carrier.

The Commission's proposal to allow the use of PIC-freeze materials that are limited to an impartial presentation of information, without promotional materials that amount to marketing solicitations, is a good start.[18] While the Commission could extend its current PIC-change verification procedures to PIC-freeze solicitations, another alternative is to adopt a different verification procedure, such as a three-way call between the submitting carrier, the executing carrier, and the end user consumer, to verify the PIC freeze and PIC freeze change. This would allow consumers and carriers more flexibility to move to a new carrier. In order to both promote competition and protect consumers, the frozen IXC choice should automatically remain in place if consumer switches LECs but not IXCs. Finally, WorldCom agrees with the Commission's proposed factors to consider in assessing the lawfulness of PIC-freeze solicitation practices, including (1) the existence of deception or fraud, (2) use of an unreasonable solicitation practice, and (3) the overall impact on consumers.[19]

III. THE COMMISSION MUST ADOPT CLEAR AND EQUITABLE LIABILITY RULES UNDER SECTION 258(b)

The Notice next asks a series of interrelated questions concerning the respective liability that slammed carriers, slamming carriers, and subscribers should be required to

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[18] Notice at para. 23.

[19] Notice at para. 24.

undertake with respect to each other.

As was discussed above, the Commission must establish clear definitions, and clear lines between different types of carriers, before apportioning liability. For example, one issue not discussed in the Notice is how to define slamming in the first place. Obviously, any kind of carrier practice that results in a change to a consumer's preferred carrier without authorization appears to be a slam from the consumer's perspective, no matter how or why the carrier change occurred. Nonetheless, the carrier liability that applies should differ depending on how the unauthorized change actually transpired. For example, is slamming by definition always intentional, or can one be a slammer unintentionally or inadvertently? Should the FCC's rules differentiate between a carrier that intentionally and purposely changes a consumer's PC without permission, and a carrier that makes such a change in good faith based on an honest mistake? Further, should the Commission's rules differentiate between an unauthorized change that occurs without following proper verification procedures, versus an unauthorized change that occurs despite a carrier's adherence to all applicable verification requirements?[20] As a result, is a slam only an unauthorized, unverified change in carrier, or can it be an unauthorized, verified change, or even an authorized, verified change? These types of questions must be addressed in a thoughtful and careful manner so that legal and regulatory liability necessarily is triggered by the appropriate level of carrier responsibility.

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[20] For example, the Telecommunications Act appears to assign unlawfulness, and hence legal liability, only where the carrier has violated the Commission's verification requirements, regardless of whether the change in carrier was actually authorized or not. See 47 U.S.C. Sections 258(a), 258(b).

A. Liability Of Subscribers And Carriers To Each Other Should Be Governed By Three Fundamental Statutory And Equitable Principles

1. The Commission should adopt rules consistent with three principles

Three fundamental principles should apply where a telecommunications carrier has violated the Commission's verification procedures and collects charges from a consumer for unauthorized services. Each of these principles shares the common goal of returning the party to its pre-slamming position. First, as a matter of equity, the consumer must be made whole for any charges paid or expenses incurred that would not otherwise have been paid or incurred ("make whole"). Second, as a requirement of Section 258, the slammed carrier must be made whole by receiving from the slamming carrier all charges it has collected from the consumer from the time the slam occurred ("make whole"). Third, as a matter of equity, the slamming carrier should be left with no more and no less money from the slammed consumer than the carrier had prior to the slam ("make nothing").

Under the statute, once a carrier "collects" payment from a consumer based on a violation of the Commission's verification procedures (and, presumably, based on an unauthorized change in carrier), all such charges must be sent to the slammed carrier. For example, a slamming carrier charges a consumer $10.00 for the same long distance calls that the slammed carrier would have charged its rightful subscriber $8.00. The consumer subsequently pays the slamming carrier, realizes what has occurred, and contests the slammed carrier's selection as the consumer's PIC. Under the statute, the slamming carrier must pay the slammed carrier the full amount collected ($10.00). The question then becomes how the consumer can be made whole for the payment of charges above what otherwise would have been charged by the slammed carrier. One solution is for the slammed carrier to reimburse the

consumer for any difference in the rates of the slamming and slammed carriers ($2.00). Under this approach, the consumer will have been made whole by paying what it would have paid to its preferred carrier, the slammed carrier has been made whole by receiving what it would have received from its rightful subscriber, and the slamming carrier has made nothing from the entire transaction.

Application of the three principles outlined above have several other ramifications for Commission policy. First, WorldCom urges the Commission to reject the view of at least one party that a consumer who has been slammed by a carrier should be absolved of all liability for the toll charges assessed by that carrier.[21] This would violate the first principle, and would create the enormous potential for consumer fraud. By giving consumers an attractive incentive to claim that they have been slammed, or to delay reporting an actual case of slamming, consumers will be able to engage in "carrier hopping," and thereby avoid payment of charges for telecommunications services that they have actually requested and used.

If the Commission nevertheless should decide to adopt rules that do create incentives for consumer fraud, WorldCom strongly recommends that these rules constrain those incentives as much as possible. For example, if the Commission decides to absolve consumers of unauthorized carrier charges, that policy should apply for no more than ten days after the consumer receives the first bill from the slamming carrier. This would allow consumers sufficient time to report the slamming to his or her preferred carrier and dispute the charges from the slamming carrier, while also limiting the period for which the consumer would be eligible for free calling.

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[21] Notice at para. 26.

WorldCom also believes that the slammed carrier should not be authorized to recover from the slamming carrier more than the full amount "collected" by the slammed carrier from the consumer. It would be contrary to the plain language of Section 258 for the slammed carrier to be more than simply "made whole." Likewise, the consumer should not receive from the slamming carrier the payment of premiums that the consumer would have earned if not for the slamming. Instead, the slammed carrier, which has received payment in full from the slammed carrier for the disruption in service, should pay the premium. The slammed carrier would have paid the premiums anyway, as a reward to its subscriber for usage of services, so being made whole for the use of these services should take care of the cost of the premiums as well.

By taking away the economic incentives for a carrier to slam, without allowing any one entity to receive a potential windfall, incidents of slamming should be reduced. The slamming carrier, in addition to paying either the consumer or the slammed carrier sufficient monies to make each party whole, also must pay the ILEC a PIC change charge (usually $5.00 per ANI) and an unauthorized PIC change charge (usually $30.00 per ANI), in addition to its own marketing, billing, and other overhead expenses. In combination, the "make whole" requirements, the payment of PIC change-related charges, and the expenses incurred, make the slamming incident an wholly unprofitable one for a slamming carrier.

2. Carrier-to-carrier liability should depend on equitable considerations

As mentioned above, the liability issue hinges to a large extent on the actual definition of slamming. The Telecommunications Act only makes it unlawful for a carrier to

violate the Commission's verification requirements, and does not speak to the further question of whether the change in carrier was actually authorized or not.[22]

WorldCom suggests that the Commission establish liability based on whether an intentional slam has occurred. Where the verification procedures have been followed, and the authorization is correct, obviously no slam has occurred and the carrier bears no liability. Where the carrier correctly follows the verification procedures, but authorization somehow is incorrect, the Commission should not apportion a punitive level of liability to the carrier. For example, the carrier could have made an internal systems error, or encountered a "fat finger" problem, where one or more digits are incorrectly entered into a form or database. Likewise, the carrier could be faced with incorrect or conflicting information from the customer, such as a dispute between two members of a household over whether a change in carrier was authorized or not. In these types of instances, which ordinary verification typically would not detect, the slamming carrier should bear no slamming liability, other than making the consumer whole.

On the other hand, where the carrier has failed to follow the Commission's verification procedures, and the resulting authorization is incorrect, the Commission should deem this to be an intentional slam. The slamming carrier in this instance should bear full liability by making both the consumer and the slammed carrier whole.

Additionally, the Commission should adopt its proposed "but for" liability test.[23] This test is a familiar concept from tort law, and correctly apportions liability based on whether the carrier's action is the proximate cause of the slam.

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[22] See 47 U.S.C. Sections 258(a), 258(b).

[23] Notice at para. 34.

The Notice also asks whether it should require carriers to use private settlement negotiations regarding the transfer of changes as a means of resolving disputes between carriers.[24] WorldCom agrees with this concept. Carriers should be able to work out their differences in the context of settlement talks.

Finally, WorldCom strongly supports the adoption of any alternative mechanism for executing PC changes that will reduce PC-change disputes and eliminate current incentives for ILECs to discriminate unreasonably in their role in the PC-change process.[25] In particular, the Commission should undertake a separate rulemaking proceeding to consider the use of an independent third party to execute PC changes on a competitively-neutral basis. MCI raised the possibility of such a system in a recent petition to the Commission, and WorldCom strongly supports a thorough and prompt examination of this proposal.

B. The Lawfulness Of A Resale Carrier's Change In Underlying Network Provider Should Not Be Deemed A Slamming Issue

The Notice next discusses the issue of when resale carriers should be obligated to notify their subscribers of a change in their underlying network provider. The Commission tentatively concludes that it should establish a "bright line" test to determine whether a consumer has relied on a resale carrier's identification of a particular underlying carrier, and seeks comments on what criteria should be used.[26]

WorldCom does not believe that the issue of when a resale carrier should disclose

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[24] Notice at para. 31.

[25] Notice at para. 35.

[26] Notice at para. 40.